

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I.(a) PLAINTIFFS

OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA, et al.

DEFENDANTS

HAMMAN'S INC., a California Corporation, and
JAMES DEAN HAMMAN, Individually

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Alameda

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)

Muriel B. Kaplan, Saltzman & Johnson Law Corporation
120 Howard Street, Suite 520, San Francisco, CA 94105
415-882-7900

ATTORNEYS (IF KNOWN)

8-680
PTH

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 791 Empl.Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 |

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action for collection of delinquent contribution payments under Employee Retirement Income Security Act (29 USC Sections 1001 et seq.)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

1/29/08

SIGNATURE OF ATTORNEY OF RECORD

Muriel B. Kaplan

Court Name: U.S. District Court, NDCA
Division: 3
Receipt Number: 34611015118
Cashier ID: bucklem
Transaction Date: 01/29/2008
Payer Name: saltzman and johnson


CIVIL FILING FEE

For: gil crosthwaite
Case/Party: D-CAN-3-08-CV-000600-001
Amount: \$350.00

CHECK

Check/Money Order Num: 23996
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00


Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.

1 Muriel B. Kaplan, Esq. (SBN 124607)
Michele R. Stafford, Esq. (SBN 172509)
2 SALTZMAN & JOHNSON LAW CORPORATION
120 Howard Street, Suite 520
3 San Francisco, CA 94105
(415) 882-7900
4 (415) 882-9287 – Facsimile
mkaplan@sjlawcorp.com
5 mstafford@sjlawcorp.com

6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 GIL CROSTHWAITE, RUSS BURNS, in their
12 respective capacities as Trustees of the
OPERATING ENGINEERS HEALTH AND
13 WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA; PENSION TRUST FUND
14 FOR OPERATING ENGINEERS;
PENSIONED OPERATING ENGINEERS
15 HEALTH AND WELFARE FUND;
OPERATING ENGINEERS AND
16 PARTICIPATING EMPLOYERS PRE-
APPRENTICESHIP, APPRENTICE AND
17 JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; OPERATING
18 ENGINEERS VACATION AND HOLIDAY
PLAN; OPERATING ENGINEERS
19 CONTRACT ADMINISTRATION TRUST
FUND; OPERATING ENGINEERS MARKET
20 PRESERVATION TRUST FUND;
OPERATING ENGINEERS INDUSTRY
21 STABILIZATION TRUST FUND; BUSINESS
DEVELOPMENT TRUST FUND; AND
22 HEAVY AND HIGHWAY COMMITTEE,

23 Plaintiffs,

24 v.

25 HAMMAN'S INC., a California Corporation,
and JAMES DEAN HAMMAN, Individually,

26 Defendants.
27

Case No.: C08-0680 PJH

COMPLAINT

1 Parties

2 1. The Operating Engineers Health and Welfare Trust Fund for Northern California;
3 Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension
4 Trust Fund for Operating Engineers, and the Operating Engineers Annuity Plan); Pensioned
5 Operating Engineers Health and Welfare Fund; Operating Engineers and Participating Employers
6 Pre-Apprenticeship; Apprentice and Journeyman Affirmative Action Training Fund; and
7 Operating Engineers Vacation and Holiday Plan are employee benefit plans as defined in the
8 Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). They
9 and their fiduciaries are together referred to herein as "ERISA Plaintiffs." Gil Crosthwaite and
10 Russ Burns are Co-Chairmen of the Joint Boards of Trustees of the ERISA Plaintiffs with
11 authority to act on behalf of all Trustees.
12

13 2. Operating Engineers Local Union No. 3 of the International Union of Operating
14 Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor
15 Relations Act ("NLRA"), 29 U.S.C. § 152(5).
16

17 3. HAMMAN'S INC. and JAMES DEAN HAMMAN are employers by virtue of
18 ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2). He and those entities
19 are referred to herein as "Defendants". JAMES DEAN HAMMAN is further a personal guarantor
20 of payment to plaintiffs of the fringe benefits claimed herein, pursuant to the Collective
21 Bargaining Agreement described below.
22

23 Jurisdiction

24 4. Jurisdiction exists in this Court over the claims asserted by the ERISA Plaintiffs by
25 virtue of ERISA § 502, 29 U.S.C. § 1132, in that the ERISA Plaintiffs seek to enforce the
26 provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which
27
28

1 violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief
2 under ERISA.

3 5. Jurisdiction exists in this Court over all the claims by virtue of Labor Management
4 Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that the plaintiffs seek to enforce the terms
5 and conditions of a collective bargaining agreement between the employer and a labor
6 organization.
7

8 6. To the extent jurisdiction over any claim does not exist under ERISA or the
9 LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. §
10 1367 in that they arise out of a common nucleus of operative facts that form the basis of the
11 federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.
12

13 Venue

14 7. Venue exists in this Court with respect to the claims under ERISA § 502 because
15 all of the plans of the ERISA Plaintiffs are administered within this district and the breach took
16 place in this district.

17 8. Venue exists in this Court with respect to the claims under LMRA §301(a) because
18 this Court has jurisdiction over the parties, as the Union maintains its principal place of business in
19 this district, its duly authorized officers or agents are engaged in representing employee members
20 in this district, and the claims arise in this district.
21

22 Intradistrict Assignment

23 9. The basis for assignment of this action to this court's Oakland Division is that all of
24 the events and omissions giving rise to plaintiffs' claims occurred in the County of Alameda,
25 where the ERISA Plaintiff funds and union dues, were administered during the period claimed
26 herein, and where defendants therefore failed to fulfill their statutory and contractual obligations to
27 the plaintiffs.
28

Bargaining Agreement

10. The Union and defendants entered into a collective bargaining agreement requiring employer contributions to the Plaintiff Funds, and to the Union for union dues and to other Trust Funds more fully described in the Master Agreement incorporated into the Independent Northern California Construction Agreement to which defendants are signatory. That Agreement is referred to herein as the "Bargaining Agreement," and the ERISA Plaintiffs and Trust Funds are third party beneficiaries of that Bargaining Agreement. Additionally, Hamman's Inc. is signatory to the Private Work Agreement for District 10 (Santa Rosa), which similarly requires contributions to the plaintiff Funds, to the Union for dues, and to other Trust Funds more fully described therein.

11. The Operating Engineers Market Preservation Fund, Operating Engineers Industry Stabilization Trust Fund, Business Development Trust Fund, and Heavy and Highway Committee, together referred to herein as "Trust Funds," are funds for which plaintiff Boards of Trustees are the assignees of monies due under the Bargaining Agreement.

12. Under the terms of said Bargaining Agreement and of the governing documents of the ERISA Plaintiffs which documents are incorporated into the Bargaining Agreement and made binding on defendants, defendants are (1) required to submit monthly reports of hours worked by its employees, and (2) to regularly pay to the Plaintiff ERISA Funds, to the Union for union dues, and to the Trust Funds, certain sums of money, the amounts of which are determined by the hours worked by employees of defendants, all as more fully set forth in said Bargaining Agreement. Also under the terms of said Bargaining Agreement and the governing documents of the Plaintiff Funds, defendants (3) agreed to pay liquidated damages for each delinquent payment, which become part of the contributions. Defendants further agreed (4) to pay interest on the combined contributions and liquidated damages at the rates set by the Bargaining Agreement, from the day

1 immediately following the date that each such payment became due until paid in full, all as more
2 fully set forth in said Bargaining Agreement.

3 Under the terms of the Bargaining Agreement to which he is signatory, (5) defendant
4 James Dean Hamman is individually liable for any corporate obligation for payment to plaintiff
5 Trust Funds. Included therein is the obligation to provide certain records for review by plaintiffs'
6 representatives, and to (6) pay any amounts found due on audit.

8 Facts

9 13. Defendants underpaid contributions owing to the plaintiffs under the Bargaining
10 Agreement for work performed during the months November 2005 through November 2006, and
11 further failed to pay contributions reported by them as owing to the plaintiffs under the Bargaining
12 Agreement for work performed during the months of July through September 2007. Liquidated
13 damages and interest have been incurred and are owing for the unpaid contributions owed for this
14 period.

15
16 14. Demand was made on defendants on behalf of plaintiffs, for payment of all
17 delinquent contributions, liquidated damages and interest due to the ERISA Plaintiff Funds, the
18 Union, and the Trust Funds. Defendant has failed and refused to make payment of any amounts
19 due claimed herein, as required by the Bargaining Agreement.

20
21 15. Defendants have a statutory duty to make the required payments timely to the
22 ERISA Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and by failing to make such timely
23 payments has violated the law.

24 16. Defendants' failure and refusal to timely submit the aforesaid payments, as alleged
25 herein, was at all times, and still is, willful. Said refusal is unjustified and done with malicious
26 intent. Defendants' failure to timely make such payments in compliance with the Bargaining
27 Agreement has reduced the corpus of the ERISA Plaintiff funds and operating ability of the
28

1 Union, thereby impairing their ability to pay or provide benefits to members and beneficiaries, and
2 thereby causing harm to all ERISA Plaintiffs funds and to the Union. Defendants' obligations
3 pursuant to the Bargaining Agreement are continuing obligations; defendants continue to breach
4 said Bargaining Agreement by failing and refusing to timely pay monies due thereunder to the
5 Plaintiff Funds and the Union. Plaintiffs are informed and believe, and therefore allege, that
6 defendants will continue to willfully refuse to make said payments unless ordered by this Court to
7 comply.
8

9 17. Plaintiffs are without an adequate remedy at law and will suffer continuing and
10 irreparable injury, loss and damage unless defendants are ordered specifically to perform all
11 obligations required on defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,
12 the LMRA, 29 U.S.C. §§ 141-197, the Bargaining Agreement, and the governing documents of
13 the Plaintiffs Funds referred to therein, and are restrained from continuing to refuse to perform as
14 required thereunder.
15

16 18. This Court is authorized to issue injunctive relief based on traditional standard. As
17 set forth above, plaintiffs have a strong likelihood of success on the merits, there is the possibility
18 that the Board of Trustees and the participants will suffer irreparable injuries, and the balance of
19 hardships and advancement of public interest favor plaintiffs.
20

21 Prayer

22 WHEREFORE, Plaintiffs pray as follows:

23 1. For a judgment against defendants as follows:

24 a. For unpaid contributions for hours worked as specified above and thereafter
25 through judgment;

26 (1) To the ERISA Plaintiffs, in accordance with ERISA Section
27 502(g)(2)(A), 29 U.S.C. Section 1132(g)(2)(A) and the Bargaining Agreement;
28

1 (2) To the Union in accordance with the Bargaining Agreement.

2 b. Liquidated damages on late paid and unpaid contributions in an amount
3 provided for under the Bargaining Agreement and governing documents of the Plaintiff Funds and
4 with respect to the ERISA Plaintiffs, ERISA Section 502(g)(2)(c), 29 U.S.C. Section
5 1132(g)(2)(c).
6

7 c. Interest on late paid and unpaid contributions, dues and liquidated damages
8 which become a part of the contributions, at the rates set in accordance with the Bargaining
9 Agreement, the governing documents of the ERISA Plaintiffs and the ERISA Section
10 502(g)(2)(B), 29 U.S.C. Section 1132(g)(2)(B).
11

12 2. For any additional contributions and dues payable to plaintiffs and the Trust Funds
13 as third party beneficiaries of the Bargaining Agreements at time of judgment, plus interest and
14 liquidated damages as above provided and in accordance with the Bargaining Agreements, the
15 governing documents of the Plaintiff Funds, and with respect to the ERISA Plaintiffs, ERISA
16 Section 502(g)(2), 29 U.S.C. Section 1132(g)(2).
17

18 3. ERISA Plaintiffs' reasonable attorneys' fees and costs of this action and for
19 auditors' costs, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and
20 (E); and in accordance with the collective bargaining agreement for all Bargained Plans, and with
21 LMRA Section 301, 29 U.S.C. § 185 for all plaintiffs.
22

23 4. For an order,

24 (a) requiring that defendants comply with their obligations to plaintiffs under
25 the terms of the Bargaining Agreement and the governing documents referred to therein;

26 (b) enjoining defendants from violating the terms of those documents and of
27 ERISA; and
28

///

1 (c) enjoining defendants from disposing of any assets until said terms have
2 been complied with, and from continuation or operating of defendants' business until said terms
3 have been complied with.

4 5. That the Court retain jurisdiction of this case pending compliance with its orders.

6 6. For such other and further relief as the Court may deem just and proper.

7
8 Dated: January 28, 2008

SALTZMAN & JOHNSON LAW CORPORATION

9
10 By: _____/s/_____

11 Muriel B. Kaplan
12 Attorneys for Plaintiffs
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